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Supreme Court, U.S.
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No. 01-875

In The
Supreme Court of the United States

Kenneth Curtis, Individually and d/b/a
Privacy Protection Services,

Petitioners,

vs.

The State of South Carolina, The South Carolina General Assembly ex. rel., Charles M. Condon, as Attorney General for the State of South Carolina

Respondents.

On Petition For A Writ Of Certiorari
To The South Carolina Supreme Court

Respondents' Brief In Opposition

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QUESTIONS PRESENTED

I. WHETHER THE SOUTH CAROLINA SUPREME COURT, CONSISTENT WITH THIS COURT'S RELEVANT DECISIONS, PROPERLY DETERMINED THAT S.C. CODE ANN. § 16-13-470 DOES NOT VIOLATE ARTICLE I, § 8 OF THE UNITED STATES CONSTITUTION BY PROHIBITING THE TRANSPORTATION OF URINE INTO SOUTH CAROLINA WHEN SUCH URINE IS INTENDED TO DEFRAUD A DRUG TEST.

II. WHETHER THE SOUTH CAROLINA SUPREME COURT, CONSISTENT WITH THIS COURT'S RELEVANT DECISIONS, PROPERLY DETERMINED THAT S.C. CODE ANN. § 16-13-470 DOES NOT VIOLATE PETITIONERS' SUBSTANTIVE DUE PROCESS RIGHTS BY IMPACTING ON THE FIRST AMENDMENT RIGHTS OF FREEDOM OF EXPRESSION AND THAT, EVEN IF THIS STATUTE DID IMPINGE ON THOSE FIRST AMENDMENT RIGHTS, THE STATUTE COMPORTS WITH THE FOURTEENTH AMENDMENT.

III. WHETHER THE SOUTH CAROLINA SUPREME COURT, CONSISTENT WITH THIS COURT'S RELEVANT DECISIONS, PROPERLY DETERMINED THAT S.C. CODE ANN. § 16-13-470 DOES NOT VIOLATE PETITIONERS' CONSTITUTIONAL RIGHT OF PROCEDURAL DUE PROCESS UNDER THE FOURTEENTH AMENDMENT BECAUSE IT

IS NOT VAGUE AND OVERLY BROAD AND DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE BY DISPARATE TREATMENT.

IV. WHETHER THIS CASE PRESENTS ANY COMPELLING REASON TO GRANT A PETITION FOR WRIT OF CERTIORARI.

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COUNTER STATEMENT OF THE CASE

This case involves the constitutionality of a statute which prohibits the selling of urine with the intent to defraud a drug screening test, a statute passed pursuant to the police powers of the State of South Carolina. Petitioners have operated for three years under the business name of Privacy Protection Services with the principal place of business in Greenville, South Carolina. This business involves the sale of "unadulterated and certified drug free human urine in interstate commerce." Pet. App. 48a. Petitioners also include with the sale of the urine a pouch, tube and chemical hand warmer type device. *Curtis v. State*, 345 S.C. 557, 565, 549 S.E.2d 591, 595 (2001).

On June 11, 1999, the Governor of the State of South Carolina signed into law Senate Bill 277, which amends S.C. Code Ann. § 16-13-470 (hereinafter, the "Statute") "to provide that selling urine with the intent to defraud a drug screening test is a felony. . .." 1999 S.C. Acts 65. Section 16-13-470 provides a penalty for the first offense of a fine of not more than five thousand dollars and imprisonment of not more than three years or both and a penalty for the second or subsequent offense of a fine of not more than ten thousand dollars or imprisonment of not more than five years, or both. S.C. Code Ann. § 16-13-470 (West Supp. 2000). Before the South Carolina Supreme Court struck such language, the Statute provided that "[i]ntent is presumed if a heating element or any other device used to thwart a drug-screening test accompanies the sale . . .." *Id.*

In their Complaint, Petitioners allege that this Statute "constitutes a wrongful and unconstitutional interference and deprivation of the Petitioners's property rights to do business, his privacy rights, liberty to contract and freedom of speech in violation of the First, Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States and Article I, Sections 2, 3 and 13 of the Constitution of the State of South

Carolina and the statutory and decisional laws of the State of South Carolina." Pet. App. 50a. The Complaint sets forth three causes of action seeking an Order (1) declaring the statute unconstitutional; (2) enjoining the enforcement of the statute; and (3) granting a judgment for damages, based upon the theory of inverse condemnation, attorneys fees and costs. Pet. App. 47a - 52a.

On March 18, 1999, the Honorable Charles B. Simmons issued an Order Granting *Ex Parte* Temporary Restraining Order restraining the enforcement of 1999 S.C. Sen. Bill 277 pending a hearing on the Motion for temporary restraining order. A hearing was conducted on June 25, 1999, before the Honorable Tom J. Ervin, Circuit Court Judge, in the Greenville County Court of Common Pleas, on the Petitioners' Motion for Temporary Restraining Order and/or Temporary Injunction. Judge Ervin denied the Petitioners' Motion for temporary injunction and issued a formal order on July 8, 1999. Petitioners filed a Motion for Reconsideration which was denied. An appeal of the denial of the temporary injunction followed.

On September 1, 1999, the Honorable Henry Floyd conducted a hearing and ordered the proceedings bifurcated with regard to the damages issues and the constitutional issues. Pending the appeal of the denial of the temporary injunction, on May 2, 2000, the Honorable Alison R. Lee heard the merits of the case and ruled that the Statute was constitutional in an order filed August 18, 2000. Judge Lee denied a motion to reconsider on September 27, 2000, and an appeal followed.

Thus, these issues came before the South Carolina Supreme Court on separate appeals, first on the denial of a temporary injunction and then on the appeal of the hearing on the merits. At a hearing on October 4, 2000, the South Carolina Supreme Court, in response to a motion by the Respondents that the appeal of the denial of the temporary injunction was rendered

moot by the issuance of an order on the merits, consolidated the merits appeal with the temporary injunction appeal. *Curtis*, 345 S.C. at 569, 549 S.E.2d at 597.

The South Carolina Supreme Court found that the Statute unconstitutionally shifts the burden of proof to the criminal defendant by stating that "intent is presumed" under certain conditions, thereby violating this Court's holding in *Sandstrom v. Montana*, 442 U.S. 510 (1979), because it acts as a conclusive presumption. *Curtis*, 345 S.C. at 570, 549 S.E. 2d at 597-98. The South Carolina Supreme Court severed the unconstitutional presumption language from the remainder of Section 16-13-470.

The South Carolina Supreme Court rejected Petitioners' other constitutional attacks of the Statute and found (1) Section 16-13-470 is not unconstitutionally vague and overbroad; (2) "Section 16-13-470 is a legitimate exercise of the State's police powers in regulating public safety and welfare" and that this "public purpose of creating safety in the workplace outweighs any legitimate interest, if any, of [Petitioners] in doing business[;]" (3) Section 16-13-470 does not violate Petitioners' right to free speech, particularly in light of the fact that the presumed intent language with regard to the inclusion of literature with the urine kit sales was severed; (4) Petitioners' "equal protection claims fail because all individuals who engage in conduct prohibited by section 16-13-470 are treated alike, regardless of whether they adulterate urine samples with herbal supplements or chemicals[;]" (5) the Statute does not violate the Eighth Amendment prohibition against cruel and unusual punishment; (6) this case does not involve the Commerce Clause and "does not unduly burden interstate commerce because it does not ban the sale of urine and other bodily fluids[;]"(7) the Statute does not involve an act of surveillance by the State and does not violate the right to privacy particularly when Petitioners do not have standing to assert the privacy rights of those subject to urine testing; (8) Petitioners do not have standing to assert the constitutional rights

of his customers, and the Statute does not violate the Fourth Amendment because it "does not mandate drug testing but simply makes it a crime to sell urine or other adulterants with the intent to defraud a drug test." *Curtis*, 345 S.C. 557, 549 S.E.2d 591 (2001).

REASONS FOR DENYING THE WRIT

The decision of the South Carolina Supreme Court is correct and does not conflict with the decisions of this Court, any federal court of appeals, or any other state court of last resort. Moreover, this case does not present any issue of broad importance. Further review is therefore not warranted.

I.

THE SOUTH CAROLINA SUPREME COURT PROPERLY HELD THAT S.C. CODE ANN. § 16-13-470 DOES NOT VIOLATE ARTICLE I, § 8 OF THE UNITED STATES CONSTITUTION BY PROHIBITING THE TRANSPORTATION OF URINE INTO SOUTH CAROLINA WHEN SUCH URINE IS INTENDED TO DEFRAUD A DRUG TEST.

Petitioners argue that S.C. Code Ann. § 16-13-470 impermissibly interferes with interstate commerce in that it prohibits the flow of interstate goods and burdens interstate commerce. The Commerce Clause, U.S. Const. art 1, § 8, however, is not invoked by the Statute, and the South Carolina Supreme Court properly rejected Petitioners' arguments finding that "this case does not involve the commerce clause, [sic] it involves the legislature's exercise of its police powers to prohibit commerce that is intended to defraud South Carolina employers and create an unsafe work environment." *Curtis*, 345 S.C. 557, 575, 549 S.E. 2d 591, 600 (2001).

The United States Supreme Court has recognized that the Commerce Clause "limits the powers of the States to erect barriers against interstate trade." *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27, 35 (1980). Section 16-13-470, however, does not erect barriers against interstate trade with regard to the selling, transporting, or distributing urine; it simply prohibits such activities when those activities are intended to defraud a drug screening test. Thus, the South Carolina Supreme Court properly found that "section 16-13-470 does not unduly burden interstate commerce because it does not ban the sale of urine or other bodily fluids [but] simply makes it unlawful for someone to sell, give away, distribute, or market urine with the *intent* to use the urine to defraud a drug or alcohol screening test." *Curtis*, 345 S.C. 557, 575, 549 S.E. 2d 591, 600 (2001). Thus, this Statute does not invoke the protections of the Commerce Clause.

Moreover, even if the Commerce Clause were invoked, this Court has constantly repeated, "not all burdens upon commerce, but only undue or discriminatory ones, are forbidden." *Breard v. Alexandria*, 341 U.S. 622, 636 (1951), citing *Nippert v. Richmond*, 327 U.S. 416, 425-26 (1946) ("Where no discrimination existed, in a somewhat similar situation, we upheld the state regulation as a permissible burden on commerce"). Section 16-13-470 does not discriminate against non-residents of South Carolina but prohibits anyone from selling, transporting, or distributing urine with the purpose of defrauding a drug test. Thus, any burden which may fall upon interstate commerce is not discriminatory and, therefore, does not violate the Commerce Clause.

Further, this Court has determined that "[t]his limitation upon state power, of course, is by no means absolute" and "the States retain authority under their general police powers to regulate matters of 'legitimate local concern,' even though interstate commerce may be affected.'" As outlined more fully

below, the exercise of South Carolina's police powers in securing public safety and safety in the workplace by prohibiting an activity which purports to defraud drug screening is not limited by the powers of the Commerce Clause.

II.

THE SOUTH CAROLINA SUPREME COURT PROPERLY DETERMINED THAT S.C. CODE ANN. § 16-13-470 DOES NOT VIOLATE PETITIONERS' SUBSTANTIVE DUE PROCESS RIGHTS BY IMPACTING ON THE FIRST AMENDMENT RIGHTS OF FREEDOM OF EXPRESSION. FURTHER, THE SOUTH CAROLINA SUPREME COURT PROPERLY HELD THAT, EVEN IF THIS STATUTE DID IMPINGE ON THOSE FIRST AMENDMENT RIGHTS, THE STATUTE COMPORTS WITH THE FOURTEENTH AMENDMENT.

Petitioners use a lot of space within their Petition to argue a political position with regard to the use of drug-screening tests and include similar arguments in literature packaged with the sale of the urine kits. Petitioners argue that the substantive right to free expression of ideas has been unconstitutionally prohibited in violation of the First Amendment by Section 16-13-470. This argument is without merit because (1) the Statute does not violate the substantive right to freedom of expression, and (2) even if this Court were to find that the Statute affects the First Amendment right to freedom of expression, this expression involves commercial speech, and the State of South Carolina has demonstrated a "reasonable fit" between the Legislature's ends and the means chosen to accomplish those ends. If this Court finds a stricter analysis is required, the State of South Carolina has certainly shown a compelling state interest and demonstrated that the statute is the least restrictive means of insuring its stated interest.

With regard to substantive due process rights, this case is reminiscent of the drug paraphernalia cases which have been subjected to numerous constitutional challenges. As stated by the South Carolina Supreme Court in its decision "the United States Supreme Court has held drug testing of employees through urinalysis is lawful and constitutional." *See, e.g., Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989) (testing railroad employees in a safety-sensitive position for drugs and alcohol after a serious accident was constitutional); *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989) (drug testing employees carrying firearms involved in the interdiction of illegal drugs involved a compelling government interest in self-protection and public safety); *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995) (random drug testing of students involved in school athletic programs does not violate a student athlete's "expectation of privacy"). *See also Loder v. City of Glendale*, 14 Cal.4th 846, 927 P.2d 1200 (1997) (city's suspicionless drug testing of all job applicants who were offered positions was reasonable under Fourth Amendment).

Thus, drug testing utilizing urinalysis is lawful, constitutional, and in no way unreasonably violates an employee's privacy interest if the tests are conducted pursuant to the parameters discussed by the courts.

In the Petition, Petitioners argue that the Statute protects no legitimate public purpose, and Petitioners use the opportunity once again to further the political position in opposition to drug testing in the workplace. Many states, including South Carolina, have passed laws which permit random drug testing as one component to further the goals of achieving drug-free workplaces. *See* S.C. Code Ann. § 38-73-500 (West Supp. 2000) (workers' compensation credit for random drug testing "to provide incentive for employers to prevent drug use and the tragedies associated with work related accidents" Preamble of 1997 S.C. Act 92); as well as S.C. Code Ann. § 41-1-15 (West Supp. 2000) (authorizing

establishment of drug prevention program in workplace in order to give private sector employers the opportunity "to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work related accidents resulting from substance abuse by employees" Preamble of 1997 S.C. Act 92).

By making illegal the sale of bodily fluids or other acts with the intent to defraud a drug screening test, the Legislature has added another important element to South Carolina's workplace drug prevention legislation. *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714 (Tenn. 1997) (in light of state legislation promoting drug-free workplaces, no public policy is violated by a private employer discharging an at-will employee who tests positive for drug use on a random drug test). Not only has the Legislature tried to secure the safety of the workplace against those who use drugs, but also against those who provide the means to conceal the use of drugs.

As found by the South Carolina Supreme Court in its opinion in this case, "[a] statute making it unlawful to defraud a drug test furthers the public purpose of ensuring a drug-free workplace." *Curtis*, 345 S.C. at 573, 549 S.E.2d at 599. Thus, the South Carolina Supreme Court determined that "Section 16-13-470 is a legitimate exercise of the State's police powers in regulating public safety and welfare[,]" and that "public purpose of creating safety in the workplace outweighs any legitimate interest, if any, of [Petitioner] in doing business." *Id.*

Any substantive due process challenge against this Statute fails because South Carolina has passed this Statute pursuant to its police powers and shown a compelling governmental need to restrict this conduct of selling urine to defeat a drug-screening test.

Specifically, Petitioners' First Amendment challenge fails because the Statute does not prohibit Petitioners from expressing their beliefs about drug-screening tests. As originally enacted, section 16-13-470 provided as follows:

> Intent is presumed if a heating element or any other device used to a thwart a drug-screening test accompanies the sale, giving, distribution, or marketing of urine or *if instructions which provide a method for thwarting a drug-screening test accompany the sale, giving, distribution, or marketing of urine.*

S.C. Code Ann. § 16-13-470(A) (West Supp. 2000) (emphasis added). The South Carolina Supreme Court, however, in its opinion in this case severed this "intent" section as unconstitutionally shifting the burden of proof to the criminal defendant pursuant to the previous opinion of this Court in *Sandstrom v. Montana*, 442 U.S. 510 (1979). *Curtis*, 345 S.C. at 570, 549 S.E.2d at 597. Thus, the language regarding the inclusion of literature with the urine kits has been removed from the Statute.

The South Carolina Supreme Court rejected Petitioners' arguments and found that "Section 16-13-470 does not prohibit [Petitioner] from dispensing literature regarding his political beliefs on urine testing." *Id.* Moreover, the South Carolina Supreme Court had severed the portion of the Statute which provided that intent to defraud the drug testing will be presumed if "instructions which provide a method for thwarting a drug-screening test" accompanies the sale of his urine. *Id.* Thus, the portion of the Statute which mentioned the distribution of his literature has been severed so that Petitioner's facial attack on the Statute is without merit.

Additionally, Petitioners are in the commercial endeavor of selling urine to defraud drug testing, and such commercial speech enjoys much less protection under the Constitution. In *Ohralik v. Ohio State Bar Ass'n*, this Court held that "we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression." 436 U.S. 447, 456 (1978). Further, the State of South Carolina in this case has met the burden of proof with commercial speech established in *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989), in that the State has demonstrated a "reasonable fit" between the Legislature's end in insuring public safety and safety in the workplace and the means chosen to accomplish those ends, *i.e.*, prohibiting the defrauding of these legitimate drug-screening tests by prohibiting the sale, transport, or distribution of urine or other adulterants intended to defraud these drug tests.

Moreover, this Court has held that "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, or written, or printed." *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949). Thus, "the State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity." *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978).

Section 16-13-470 does not even address, after severance of certain language by the South Carolina Supreme Court, the distribution of literature or the expression of ideas. This Statute proscribes certain "conduct" with the intent to defraud a drug test so that the Statute is not directed at Petitioners' expression of ideas regarding the validity or constitutionality of drug tests. *See*

S.C. Code Ann. § 16-13-470 (West Supp. 2000). Thus, Petitioner is free to express his ideas regarding drug-screening tests.

III.

THE SOUTH CAROLINA SUPREME COURT PROPERLY DETERMINED THAT S.C. CODE ANN. § 16-13-470 DOES NOT VIOLATE PETITIONERS' CONSTITUTIONAL RIGHT OF PROCEDURAL DUE PROCESS UNDER THE FOURTEENTH AMENDMENT BECAUSE IT IS NOT VAGUE AND OVERLY BROAD AND DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE BY DISPARATE TREATMENT.

The Due Process Clause protects against "the exaction of obedience to a rule or standard which [is] so vague and indefinite as really to be no rule or standard at all." *A.B. Small Co. v. American Sugar Refining Co.*, 267 U.S. 233 (1925). Further, a law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application. *Connally v. General Construction Co.*, 269 U.S. 385 (1926).

Generally, a criminal statute will be held invalid for vagueness when an individual could be held "criminally responsible for conduct which he could not reasonably understand to be proscribed." *United States v. Harris*, 347 U.S. 612, 617 (1954).

The Due Process Clause requires only that the statute sufficiently warn potential actors so that they may conduct themselves so as to avoid violating the law. *Rose v. Locke*, 423 U.S. 48, 50 (1975). *See also American Communications Ass'n v. Douds*, 339 U.S. 382 (1950) (constitutional standard for vagueness is the practical criterion of fair notice to those to whom the law applies). Moreover, this Court has held that one to whose

conduct the statute clearly applies does not have standing to challenge it for vagueness. *Parker v. Levy*, 417 U.S. 733 (1974).

Citing these well-settled principles of due process analysis, the South Carolina Supreme Court properly rejected Petitioners' arguments that Section 16-13-470 is unconstitutionally vague and overly broad. The South Carolina Supreme Court found that "[a]lthough some of the terms in section 16-13-470 are undefined, the intent of the statute is clear on its face." *Curtis*, 345 S.C. at 572, 549 S.E.2d at 598. The Statute specifically makes it unlawful to "sell, give away, distribute, or market urine... with the intent of using the urine to defraud a drug or alcohol screening test." In reviewing this statutory language, the South Carolina Supreme Court specifically found that "[a] person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of, the conduct the statute makes criminal." *Id.* Thus, the Act adequately warns Petitioner Curtis how to conduct himself and his business in order to avoid violating the law.

The South Carolina Supreme Court also properly rejected Petitioners' argument that terms such as "foil," "spike," "defraud," "bodily fluids," and "adulterate" are not defined by concluding that "all of these terms have common, ordinary meanings sufficient to proscribe conduct and do not need to be specifically defined." *Curtis*, 345 S.C. at 572, 549 S.E.2d at 598-99. The South Carolina Supreme Court further properly concluded that "all the Constitution requires is that the language convey sufficiently definite warnings as to the proscribed conduct when measured by common understanding and practices." *Id.* *See also United States v. Perilla*, 332 U.S. 1 (1947) ("The Constitution does not require impossible standards; all that is required is that the language conveys sufficiently definite warnings as to the proscribed conduct when measured by common understanding and practices."). These conclusions are consistent with relevant opinions of this Court.

Therefore, the Petition for Writ of Certiorari should be denied upon the grounds of procedural due process because the South Carolina Supreme Court properly concluded that the Statute is not unconstitutional as vague, overly broad, and ambiguous and, further, that this Statute adequately and fully warns Petitioners of what kind of activity is proscribed.

In this proceeding in support of its position that the Statute is vague and overly broad, Petitioners also argue that the Statute is subject to selective enforcement because it is so vague and overly broad in that it allows officials to treat people differently. Petitioners did not raise this specific issue with regard to selective enforcement before the South Carolina Supreme Court. If these arguments are instead Petitioners' arguments that the Statute violated the Equal Protection Clause because it "differentiates urine sales from the sale of herbal supplements and other products sold to mask drugs in one's urine," then the South Carolina Supreme Court properly analyzed and rejected those arguments. *Curtis*, 345 S.C. at 574, 549 S.E.2d at 599.

This Court has held that the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). This Clause, however, creates no substantive rights but instead "embodies a general rule that State must treat like cases alike but may treat unlike cases accordingly." *Vacco v. Quill*, 521 U.S. 793, 799 (1997). *See also Plyler v. Doe*, 457 U.S. 202, 216 (1982) ("'[T]he Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same.'").

The Statute clearly prohibits the sale of any adulterant which is intended to be used for the purpose of defrauding a drug test. *See* S.C. Code Ann. § 16-13-470 (West Supp. 2000). Further, any person who possesses, sells, transports, etc., urine or

adulterants with the purpose of defrauding a drug test is subject to this Statute. Thus, all such persons similarly situated are treated alike.

As properly found by the South Carolina Supreme Court, "this case does not involve a suspect classification or a fundamental right, so the question under equal protection analysis is whether the legislation is rationally related to a legitimate state purpose." *Curtis*, 345 S.E. at 574, 549 S.E.2d at 600 (citing from *Massachusetts Bd. Of Ret. v. Murgia*, 427 U.S. 307 (1976). The South Carolina Supreme Court properly rejected Petitioners' equal protection argument as follows:

> We find the classification of an individual who sells urine or an adulterant to defeat a drug test is rationally related to the legitimate state purpose of promoting a safe work environment. First, the classification is reasonably related to the legislative purpose of insuring the safety of the workplace through the protection of drug testing programs. Second, all people who constitute the class are treated similarly. The classification rests on a reasonable basis and includes any person who sells a product intended to adulterate urine or other bodily fluid sample for the purposes of defrauding a drug or alcohol screening test.

Curtis, 345 S.C. at 574, 549 S.E.2d at 600. Thus, the South Carolina Supreme Court properly found that Petitioners' equal protection claims fail because "all individuals who engage in conduct prohibited by section 16-13-470 are treated alike, regardless of whether they adulterate urine samples with herbal supplements or chemicals." *Id.*

Petitioners fail to establish an equal protection violation because (1) the Statute is reasonably related to the legislative

purpose of insuring the safety of the workplace and the general public through the protection of a drug testing program; (2) all those who constitute the class by desiring to defeat such drug testing through adulteration of the drug testing process are treated similarly, and (3) the Legislature's desire to protect the safety of the workplace and the general public welfare is reasonable. The fact that the classification of those who use urine to defeat drug tests may not "completely accomplish the legislative purpose" does not establish an equal protection violation.

Therefore, the Petition should be denied because the South Carolina Supreme Court's analysis and decision with regard to Petitioners' claims of violations of procedural due process claims, including equal protection claims, are consistent with this Court's prior relevant decisions and does not differ with those of another state or a federal court of appeals.

IV.

THIS CASE DOES NOT PRESENT ANY COMPELLING REASON TO GRANT A PETITION FOR WRIT OF CERTIORARI.

As provided, a "[r]eview on a writ of certiorari is not a matter of right, but one of judicial discretion" and "[a] petition for a writ of certiorari will be granted only for compelling reasons." Rule 10. This Petition presents no reasons favoring review of the decision of the South Carolina Supreme Court. Specifically, the South Carolina Supreme Court, this State's court of last resort, has not decided an important federal question in a way that conflicts with the relevant decisions of a United States Court of Appeals or another state court of last resort. Rule 10(b). Additionally, the South Carolina Supreme Court has not decided "an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of

this Court." Rule 10(c). Thus, review by this Court is not warranted.

For these reasons, as more specifically outlined above, the Petition for Writ of Certiorari should be denied.

CONCLUSION

Based upon the foregoing, Respondents respectfully submit that the Petition for Writ of Certiorari in this case is without merit and should be denied.

Respectfully submitted,

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